WP(C) 4695/2007

BEFORE

HON'BLE MR.JUSTICE RANJAN GOGOI

Heard Sri PK Roychoudhury, learned counsel for the petitioner, Sri BJ Ghosh, learned Government Advocate, Assam and Sri Abedin, learned counsel for the Respondent No.6. The Respondent No.6, it must be noticed, is the President of the Adhoc Committee of the Samabai Samity in question as constituted by the order dated 4.9.2007, which has been impugned in the present writ petition. The Respondents 7 to 15 are the members of the said ad hoc body and hence their interest are sufficiently represented by the Chairman i.e. the Respondent No.6

2. As agreed to by the learned counsels for the parties and as records in original have been placed before the Court, final orders in the writ petition are being passed at the motion stage.

3. By order dated 29.08.2007 issued under Section 32(5) of the Assam Cooperative Societies Act, 1949 (hereinafter referred to as the Act) an adhoc committee was constituted by the Registrar of Cooperative Societies for managing the affairs of the Udali Samabai Samity. The aforesaid action was taken by the Registrar after dissolving the previous One-man Committee constituted under Section 32(4) of the Act. By the aforesaid order dated 29.08.2007 the newly constituted Adhoc Body was required to hold the Annual General Meeting of the Cooperative Society ,including elections ,within a period of 60 days. Thereafter, by the impugned order dated 04.09.2007 the body constituted by the order dated 29.08.2007 was dissolved and in its place a new Adhoc Body headed by the Respondent No.6 as the Chairman and the Respondent Nos.5 to 15 as Members was constituted with an obligation to hold the Annual General Meeting including the elections within a period of 90 days.

4. Aggrieved by the order dated 04.09.2007 passed by the Registrar of Cooperative Societies re-constituting the Adhoc Body of the Samabai Samity in supersession of the order dated 29.08.2007, the petitioner, as the President of the Adhoc Committee of the Udali Samabai Samity constituted by the order dated 29.08.2007 has filed the present writ petition.

5. The records placed before the Court, which have been duly inspected by the learned counsels for the contesting parties, go to show that the Adhoc Body constituted by the first order dated 29.08.2007 was on the basis of the recommendation of the Minister, Co-operation on a petition filed by one Faizul Haque suggesting the dissolution of the then existing body, i.e., One-man Committee and for constitution of a fresh Adhoc Body. The names of the Members of the Adhoc Body including the Chairman and Vice Chairman were indicated in the aforesaid representation dated 27.08.2007. The composition of the Adhoc Body by the order dated 29.08.2007 is in tune with what was suggested in the representation dated 27.08.2007 as approved by the Minister. Thereafter, it appears that another representation was filed by some share-holders of the Samabai Samity stating that elections cannot be held on account of the flood situation and, therefore, an Adhoc Body should be constituted to run and manage the affairs of the Society. The composition of the Adhoc Body was once again suggested in the said representation. The said representation was endorsed to the Minister, Co-operation by the Minister, Environment & Forests on 30.08.2007, whereafter the Minister, Co-operation by order dated 31.8.2007, recorded on the body of the representation, required the Registrar of Cooperative Societies to take necessary steps in accordance with the prayer made in the representation in question. Pursuant thereto in exercise of the powers conferred under Section 31(3) of the Act, the Second Body consisting of the Respondent Nos.6 to 15 has been constituted by order dated 4.09.2007 passed by the Registrar of Cooperative Societies.

6. A contention has been raised by Sri PK Roy Chaudhury, learned counsel for the petitioner that the exercise of power under Section 31(3) of the Act by the Registrar , in the facts of the present case, is wholly unjustified. The learned counsel for the petitioner has also argued that in the present case there is no acceptable basis for dissolution of the earlier Adhoc Body within 5(five) days of its constitution. It is argued that though under Section 31(3) of the Act, the Registrar would be competent in law to pass an order replacing the existing

members of the Society if such a course of action is required to be taken in the interest of the Society, in the present case, the records produced by the learned Government Advocate do not indicate that the order dated 4.9.2007 was prompted by any such compelling reasons so as to justify the invocation of the power under Section 31(3) of the Act.

7. In reply, Sri Abedin, learned counsel for the Respondent No.6, which Respondent sufficiently represents the interest of the other members of the Adhoc Body constituted by order dated 04.09.2007, i.e., Respondent Nos.7 to 15, has contended that immediately after the formation of the Adhoc Committee by order dated 29.8.2007, 5 members had resigned and the remaining members of the Committee could not have functioned as the said remaining members could not form the requisite quorum for holding any meeting of the Adhoc Body. According to Sri Abedin, it is in the aforesaid facts and in order to make the Society functional that the Registrar of the Cooperative Societies had to dissolve the Adhoc Committee constituted by order dated 29.8.2007 and to issue the second order dated 04.09.2007 constituting another adhoc Body of which the Respondent No.6 is the Chairman and the other Respondents are the members. Learned counsel, on the aforesaid basis, has, therefore, argued that there is no infirmity with the action impugned in the present writ petition so as to warrant interference.

8. In a judgment of this Court in the case of SURUZ AHMED -VS- STATE OF ASSAM, reported in (1992) 1 GLR 69, cited by the learned counsel for the petitioner, a view has been taken that the power under Section 32(5) and/or Section 31(3) of the Act vested in the Registrar to constitute an Adhoc Body is required to be exercised independently by the Registrar without being influenced or dictated by any other authority. In the aforesaid judgment, the Division Bench has taken note of the fact that that under Section 31(3) of the Act the supreme authority is vested either in the Government or in the Registrar and further that if the Registrar is to exercise the power, it must be in his own independent wisdom and not at the dictate of the other statutory authority, i.e., the Government. The Division Bench, on due consideration of the provisions of the Act, has also taken note of the fact that there is no provision under the Act which confers any power in a Minister to issue any direction to the Registrar in the matter of constitution or re-constitution of Managing Committee.

9. The above formulation of the law by the Division Bench in SURUZ AHMED (Supra) makes it abundantly clear that the reconstitution of the Managing Committee by order dated 4.2.2007 being, admittedly, at the dictate of the Minister of Environment and Minister, Cooperation, the said order will have no sanctity in law. The manner of exercise of the power of reconstitution by the Registrar by invoking Section 31(3) of the Act leaves the Court satisfied that while issuing the order dated 04.09.2007 the Registrar has abdicated his independent power and judgment vested by the statute and has acted solely at the dictate of another authority, i.e., the Minister, which authority has no recognition in law. The Court, therefore, would not hesitate to hold that the impugned order dated 04.09.2007 is nonest in law. It is accordingly set aside.

10. The next question that will arise on the facts noticed by the Court is with regard to the validity of the order dated 29.08.2007, though the said question has not been raised by the Respondents ,assuming that the same can be so raised.

11. The eventual decision that has to be rendered by a Court exercising jurisdiction in the domain of public law under Article 226 of the Constitution, in my considered view, cannot always remain constricted to the strict parameters of the grievances that may be advanced by the contesting parties. Though, ordinarily, the Court will not enter into questions that are not raised the same is not an inviolable principle. To hold so may my result in failure to perform the primary duty cast on the Writ Court i.e. to ensure that the administrative process conforms to law. Facts not specifically pleaded or issues not raised but are otherwise revealed by the records placed before the Court must be taken due cognizance of, in appropriate case by the Court exercising jurisdiction in the domain of public law and such issues as may arise from such facts have to be answered by the Court if so required in larger public interest. It is on account of the sa

id view that the Court has deemed it appropriate to hold that in the present cas e the Court would be justified in embarking upon the next logical course of acti on, i.e., to decide on the validity of the order dated 29.08.2007. The order dat ed 29.08.2007 must necessarily be judged by the same standards that the Court ha s adopted while judging the legality of the order dated 04.09.2007. Viewed thus, what clearly transpires from the records is that the order dated 29.08.2007 was passed again at the instance of the Minister, Cooperation on the basis of the r epresentation filed by one Faizul Haque. The constitution of the Adhoc Body by o rder dated 29.8.2007, therefore, again is not based on an independent decision o f the Registrar but the said exercise has been made solely at the behest of a Mi nister, an authority that has no recognition under the provisions of the Act.

12. In view of the above, the Court is of the considered opinion that the or der dated 29.08.2007 must receive the same treatment at the hands of Court whose fundamental duty is to uphold public interest by ensuring due compliance of the law. Consequently, the order dated 29.08.2007 is also being interfered with and the matter is sent back to the Registrar for constitution of an Adhoc Committee by exercising his own independent judgment in the matter, as mandated by the la w in force.

13. Writ Petition, consequently, is disposed of in terms of the above.